LEONG HOE YANG & ORS.

v.

PETER CLAGUE

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. F 180 OF 1983]
17 APRIL 1985

LANDLORD AND TENANT: *Expiry of lease - Action for vacant possession - Variation of lease - Oral agreement - Notice of de-control - Whether any protection of trespasser - Equity - Money expended on premises - Whether there was inducement or encouragement - Equitable expectation - Effect.*

EVIDENCE: *Extrinsic oral evidence - Whether admissible.*

The defendant was the lessee of the premises pursuant to an earlier lease commencing from 1 June 1971 and subsequently, in exercise of the option for renewal, was renewed for a further period of 5 years, ending 31 May 1981. The second lease did not stipulate further extensions after its expiry.

On 19 November 1980 the defendant wrote to the plaintiffs requesting an extension of the lease for another 5 years, which the latter turned down. The defendant was informed that he had to vacate and deliver vacant possession of the premises on the expiry of the lease. The defendant failed to deliver vacant possession on the expiry date, whereupon the plaintiffs brought an action for vacant possession, double rental from 1 June 1981 to date of vacant possession, interest and costs.

The plaintiffs' application for summary judgment under O. 14 of the Rules of the High Court 1980 was dismissed by the Senior Assistant Registrar. The plaintiffs then appealed.

Held:

[1] It is settled law that, subject to the provisos of s. 92 of the Evidence Act, extrinsic oral evidence is inadmissible to show that a registered lease is not what it purports to be. Here, the lease had been registered under the provisions of the National Land Code and there was no evidence that this case fell within any of the provisos to s. 92 of the Evidence Act. Hence the first triable issue raised by the defendant that a subsequent oral agreement had varied the second lease was rejected.

[2] The defendant was not protected by the Control of Rent Act 1966 as he was aware of the application by the plaintiffs to the Rent Tribunal Board for a Certificate under s. 23(1) of the Control of Rent Act 1966 to de-control the premises and the Certificate was served on the defendant on 4 June 1971. Moreover from 1 June 1981 the defendant was a trespasser and accordingly cannot seek protection under the Act.

[3] The defendant was not entitled to any relief under the National Land Code as he had not identified the particular provision or provisions of the said Code under which he seeks relief.

[4] As to the defendant's claim for the refund of RM50,000 which he had spent on improvements on the premises, it is established law that to enable equity to intervene, there must be evidence of inducement or encouragement by the landlord or some expectations held out by him to the tenant on which the tenant expended money on the land. Here the

inducement to the improvements came not from the plaintiffs but the defendant himself and it is therefore clear that no equitable expectation was created or encouraged by the plaintiffs so as to enable the defendant to claim that he had a right to remain on the premises for as long as he wished.

[Appeal allowed with costs. Judgment for plaintiffs for vacant possession and for other reliefs sought.]

Cases referred to:
Leong Gan & Ors. v. Tan Chong Motors Company Limited [1969] 2 MLJ 8
Voo Min En & Ors. v. Leong Chung Fatt [1982] 2 MLJ 241
Low v. Casey [1949] 1 KBD 474
Ooi Ho Cheng v. Grace Joseph & Ors. [1975] 1 MLJ 168

Legislation referred to:
Civil Law Act 1956, s. 28(4)(a)
Control of Rent Act 1966, s. 23(1)
Evidence Act 1950, s. 92
Rules of the High Court 1980, O. 14

For the plaintiffs - S. Radakrishnan
For the defendant - Dato Morris Edgar

[**Editor's Note:** Appeal against this judgment is pending in the Supreme Court, *vide* Supreme Court Civil Appeal No. 74 of 1985.]

JUDGMENT

Siti Norma Yaakob J:

The three plaintiffs in this suit are the trustees of the Estate of Loke Yew, deceased, and the registered proprietors of land held under Title No. HS(D) 31921 in the district of Kuala Lumpur upon which there is a dwelling house commonly known as No. 27A, Jalan Tuanku Abdul Rahman, Kuala Lumpur (hereinafter referred to as "the premises").

The defendant was the lessee of the premises having executed a Memorandum of Lease with the plaintiffs on 12 November 1976, wherein the premises were let to him for a period of 5 years commencing from 1 June 1976 to 31 May 1981, at a monthly rental of RM1,400. Pursuant to the provisions of Part Fifteen of the National Land Code 1965, the Memorandum of Lease was registered with the proper authorities and its registration no. is Jilid 4 Folio 68.

On 19 November 1980, the defendant wrote to the plaintiffs requesting an extension of the lease for another 5 years but the plaintiffs turned down such a request and on 13 November 1980, informed the defendant that he had to vacate and deliver vacant possession of the premises on the expiry of the lease on 31 May 1981. This notice was followed by another letter dated 30 April 1981, sent by the plaintiffs' solicitors requesting the defendant to deliver vacant possession of the premises by 31 May 1981.

On the expiry date, the defendant however refused to deliver vacant possession and has continued staying on in the premises to this day and in the present action filed by the plaintiffs, they seek vacant possession of the premises, double rent at RM2,800 per month from 1 June 1981, until date of vacant possession pursuant to s. 28(4)(a) Civil Law Act 1956, interest and costs.

This action was originally filed in the Sessions Court, Kuala Lumpur but upon the defendant obtaining leave to amend his Statement of Defence and to add a counterclaim for sums well in excess of the jurisdiction of the Sessions Court, he applied for and was granted an order to have the case transferred to the High Court.

In the High Court the plaintiffs proceeded to apply for summary judgment under O. 14 of the Rules of the High Court 1980 and when the matter came before the Senior Assistant Registrar, she dismissed the plaintiffs' application with costs and allowed the defendant leave to defend the action and to proceed with the counterclaim. Being dissatisfied with this decision, the plaintiffs appealed to me.

The defendant raised the following triable issues to resist the application for summary judgment.

(1) The terms of the lease agreement had been varied by an oral agreement made between him and the second plaintiff whereby the plaintiffs agreed to allow him to continue occupying the premises for as long as he wished subject only to rentals being re-negotiated at the expiry of each term.

(2) He is protected by the Control of Rent Act 1966.

(3) He is entitled to relief under the provisions of the National Land Code 1965.

(4) He had expended RM50,000 for restoring, renovating, installing sewage and water pipes and laying an access road to the premises and he claims a refund of this amount in his counterclaim.

It is not disputed that the duration of the lease was for a period of 5 years commencing from 1 June 1976 to 31 May 1981. Even assuming that there was an oral agreement to vary the agreement so that the defendant can continue to stay on in the premises for an indefinite period of time after the expiry of each lease subject only to the rentals being negotiated, I consider that such an agreement is caught by s. 92 of the Evidence Act 1950 as:

> It is settled law that where the words of a written agreement are required by law to be registered, extrinsic oral evidence is inadmissible to show that the registered lease was not meant what it purports to be subject to the exceptions contained in the several provisos.

Leong Gan & Ors. v. Tan Chong Motors Company Limited [1969] 2 MLJ 8 and *Voo Min En & Ors. v. Leong Chung Fatt* [1982] 2 MLJ 241 have reference. The lease in this case was registered under the provisions of Part Fifteen of the National Land Code 1965 and there was no evidence to show that this case falls within any of the provisos to s. 92 and to that end, the defendant's first triable issue falls to the ground.

The plaintiffs have also denied the existence of such an oral agreement and on a balance of probabilities, I tend to agree with them in that respect for the following reasons. The defendant had been their tenant since 1971 pursuant to an earlier tenancy agreement executed between them on 2 October 1971. This earlier lease was for a period of 5 years commencing from 1 June 1971 until 31 May 1976. One of the terms of this earlier lease provided for an option for renewal for another 5 years after its expiry and it was pursuant to this clause that the second lease, the subject matter of this suit, was renewed for a further period of 5 years. However, the second lease did not stipulate further extensions after its expiry and the defendant cannot now say that he was not aware of such a provision. If indeed the plaintiffs wanted the defendant to continue occupying the premises for an indefinite period of time, they would have executed the second lease on the same terms as that of the first lease and the fact that they did not, point to the probability that they wanted the return of the premises by 31 May 1981. I do not consider that oral evidence would shed any more light on what had already been expressed in the affidavits of both the plaintiffs and the defendant and in

view of my earlier finding that even if there was such an oral agreement, it is inadmissible by virtue of s. 92 of the Evidence Act, 1950, the defendant cannot therefore possibly argue that he is entitled to defend the action based on the alleged oral agreement.

Prior to 18 May 1971, the premises was rent controlled and the defendant has averred that prior to the execution of the first lease, he was not aware that the premises was rent controlled. There is evidence that before the first lease was drawn up and executed, the plaintiffs had applied to the Rent Tribunal Board for a Certificate under s. 23(1) of the Control of Rent Act, 1966, to de-control the premises. The defendant was informed of this and by a letter dated 20 April 1971, he consented to such an application and he also informed the plaintiffs that he would surrender his monthly tenancy on 30 April 1971, to enable the plaintiffs to proceed to apply for the premises to be de-controlled and it was only after the premises had been de-controlled that the lease agreement was drawn up by solicitors for the plaintiffs and executed by both parties. Thus, when the defendant signed the first lease on 2 October 1971, he was fully aware that the premises was rent controlled at the time when negotiations for the lease had been entered into, and when the Chairman of the Rent Tribunal Board issued his Certificate dated 18 May 1971, there is evidence to show that the Certificate had been served on the defendant on 4 June 1971. Moreover from 1 June 1981, the status of the defendant is not that of a lawful tenant but that of a trespasser and relying on the decision of *Low v. Casey* [1949] 1 KBD 474, a trespasser cannot seek protection under the Control of Rent Act, 1966.

For that matter too, he is also not entitled to any relief under the National Land Code 1965 as he has not identified the particular provision or provisions of the Code under which he seeks relief.

I now come to the last triable issue whether the plaintiffs had agreed to the defendant spending RM50,000 in renovating and restoring the premises as to create an expectation on the part of the defendant that as a result of such an expenditure, he cannot be denied a further renewal of the lease. In *Ooi Ho Cheng v. Grace Joseph & Ors.* [1975] 1 MLJ 168, it was held that to enable equity to intervene:

> there must be evidence of inducement or encouragement by the landlord or some expectations held out by him to the tenant on which the tenant expended money on the land.

The plaintiffs denied consenting to the defendant spending that amount of money for repairs and contended that the defendant had taken it upon himself to effect and incur such expenses. The only repairs that they had agreed to do to the building was to prevent further leaking of the roof. It would appear from his letter dated 16 November 1970, that the defendant had volunteered to spend RM50,000 for restoring the building as he was anxious to use the upper part of the premises as his living quarters and the ground floor for displaying and selling his antiques. As a dealer of antiques, he was anxious to restore the building to its former glory and this he had done successfully but I consider that this act does not, in law, amount to encouragement on the part of the plaintiffs that the defendant should spend that large sum of money. As the inducement did not come from the plaintiffs but from the defendant himself, it is therefore clear that no equitable expectation was created or encouraged by the plaintiffs as to enable the defendant to claim that he had a right to remain on the premises for as long as he wished.

For the above reasons, I had allowed the appeal with costs and entered judgment for the plaintiffs for vacant possession of the premises, double rent at the rate of RM2,800 per month from 1 June 1981 to date of vacant possession and interest at the rate of 8% per annum on all sums payable, calculated from date of filing of this suit until realization and costs. The counterclaim is also dismissed with costs.

Also found at [1985] 2 CLJ 244